STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	:SS	
COUNTY OF MINNEHAHA	)	SECOND JUDICIAL CIRCUIT

KOH TSURUTA, Plaintiff, v. AUGUSTANA UNIVERSITY, Defendant.	Civ. 15— SUMMONS

TO: THE ABOVE-NAMED DEFENDANT, GREETINGS:

YOU ARE HEREBY SUMMONED AND REQUIRED to serve upon SHAWN M. NICHOLS, Esq., of CADWELL SANFORD DEIBERT & GARRY LLP, Plaintiff's Attorneys, whose office address is 200 E. 10th Street, Suite 200, Sioux Falls, South Dakota 57104, and whose mailing address is P.O. Box 2498, Sioux Falls, South Dakota 57101-2498, an Answer to the Complaint which is herewith served upon you within **thirty (30) days** after service of this Summons upon you, exclusive of the day of service. If you fail to do so, Judgment by default will be taken against you for the relief demanded in Complaint.

Dated this 22d day of September, 2015

CADWELL SANFORD DEIBERT & GARRY, LLP

Shawn M. Nichols
200 East 10th Street, Suite 200
PO Box 2498
Sioux Falls, SD 57101-2498
605-336-0828
snichols@cadlaw.com
Attorney for Plaintiff

EXHIBIT
A

STATE OF SOUTH DAKOTA COUNTY OF MINNEHAHA	) :SS)	IN CIRCUIT COURT SECOND JUDICIAL CIRCUIT

KOH TSURUTA, Plaintiff, v. AUGUSTANA UNIVERSITY, Defendant.	Civ. 15- COMPLAINT

COMES NOW the above-named Plaintiff by and through counsel of record and for his declaratory judgment action against the Defendant states and alleges as follows:

1. At all times material, the Plaintiff ("Koh") was a student at Augustana University.

2. During the past summer break, Koh was accused by another Augustana student of rape, an allegation which he vehemently denies. The incident at issue is alleged to have occurred on July 3, 2015.

3. The student making the allegations reported the incident to Minnehaha County law enforcement on August 4, 2015, and Koh was arrested and charged with multiple counts of sexual assault. The maximum penalty associated with the charges includes up to 50 years of imprisonment and up to a $25,000 fine.

4. On August 5, 2015, the complaining party also filed a complaint with Augustana University pursuant to the University's Title IX Equal Opportunity (Civil Rights) Policies and Procedures handbook ("Handbook").

5. Further to the complaint, Augustana immediately suspended Koh from school pending the outcome of an internal investigation and complaint-adjudication pursuant to the

policies and procedures set forth in the Handbook. Koh has sinced moved to Lake Mills, Iowa, which is three hours away by car.

6. Despite the serious nature of the allegations made against Koh, the due process procedures Augustana provides in its Handbook fall far below the due process rights afforded Koh in the parallel criminal proceedings. In particular the academic adjudication (which educators preside over) provides no right of confrontation, no right to compulsory process, no right to counsel, no right to testify, no right to present evidence, and no right to a decision by jury.

7. Further to its Handbook, Augustana requested that Koh provide a statement as to the allegations against him in derogation of his rights arising under the Fifth Amendment of the United States Constitution.

8. Koh has, through legal counsel, informed Augustana that he denies the allegations, but chooses not to waive his Fifth Amendment rights while criminal proceedings are pending.

9. Augustana has nevertheless continued with a one-sided investigation pursuant to its Handbook. The preliminary report by its investigator incorrectly and remarkably claims that Koh's has not denied the allegations and his refusal to provide a statement is evidence of his guilty.

10. Augustana personnel are not properly trained, nor experienced in fairly adjudicating allegations that carry penal consequences of up to 50 years in jail and a $25,000 fine, particularly in a 60 day timeframe.

11. Continuation of the academic adjudication will (1) prejudice ongoing criminal proceedings and investigation, (2) interferes with Koh's Fifth Amendment rights, and (3) evade

the province of a criminal jury. Further, an adverse finding by the University label Koh as a rapist after short investigation, will directly and permanently impair Koh's future employment opportunities, professional licensure aspirations, and his ability to gain admittance into other post-secondary institutions.

12. Koh, through counsel, has asked Augustana to stay the adjudication of any further Title IX proceedings, pending the outcome of his criminal charge. Augustana has failed, or otherwise refused to stay its process even though its own Handbook permits it to do so in appropriate cases.

13. The Title IX standards set forth in 20 UCS § 1681 and related guidance, neither compel an academic institution to investigate and adjudicate criminal matters, nor set forth explicit time frames for completing an academic adjudication.

14. Under Title IX Augustana is only required to provide a safe and non-discriminatory educational environment. Augustana has no legal obligation to investigate and adjudicate complaints concurrently with criminal proceedings.

15. Augustana's continued adjudication of the complaint allegations under its own policies poses an irreparable, detrimental violation of Koh's due process rights under both the Fifth and Fourteenth Amendments of the United States Constitution.

16. A real controversy exists in this matter and Koh should be entitled to declaratory relief pursuant to SDCL 21-24 *et. seq.*, injunctive relief pursuant to SDCL 15-6-65 and SDCL 21-8 *et. seq.*, and such other equitable relief as appropriate to preserve the status quo.

WHEREFORE, Plaintiff requests relief as follows:

A. For a declaratory judgment declaring that academic adjudication proceedings, contemporaneous with a criminal action, violate Koh's due process rights;

B. For a preliminary injunction immediately staying further academic adjudication proceedings;

C. For a permanent injunction permanently staying further academic adjudication proceedings pending the outcome of Koh's criminal charges;

D. That the Defendant be awarded its costs and disbursements so taxable, and

E. For such other and further relief as the Court deems just and equitable in this action.

Dated this 22nd day of September, 2015

CADWELL SANFORD DEIBERT & GARRY, LLP

Shawn M. Nichols
200 East 10th Street, Suite 200
PO Box 2498
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605-336-0828
snichols@cadlaw.com
Attorney for Plaintiff

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	:SS	
COUNTY OF MINNEHAHA	)	SECOND JUDICIAL CIRCUIT

KOH TSURUTA, Plaintiff, v. AUGUSTANA UNIVERSITY, Defendant.	Civ. 15 – APPLICATION FOR PRELIMINARY INJUNCTION

Plaintiff, by and through counsel of record, hereby moves for a preliminary injunction against the Defendant Augustana University, pursuant to SDCL 15-6-65(a). In support of this motion, Plaintiff states as follows:

1. Plaintiff is a student at Augustana University.

2. Plaintiff has been accused of rape and sexual assault by another Augustana University student. The incident allegedly took place on July 3rd, 2015, during the summer break. Plaintiff vehemently denies the charges.

3. The alleged victim reported the incident to law enforcement on August 4, 2015 and to Augustana on August 5, 2015. The accusations have led to criminal charges being filed against the Plaintiff which are currently pending in Minnehaha County. If convicted, the counts in the information are punishable by up to 50 years in prison and carry a mandatory minimum of 15 years.

4. The complaining party filed a complaint with Augustana University pursuant to Title IX, after filing a complaint with law enforcement. Augustana intends to proceeding with investigating and adjudicating the complaint pursuant to its Equal Opportunity (Civil Rights) Policies and Procedures handbook (the "Handbook").

5. The Handbook provides no right for Plaintiff to confront witnesses, no right against self-incrimination, no presumption of innocents, no right to compulsory process, no right to counsel, no right to testify, a lower burden of proof and no right to present evidence, among other due process limitations. The decision on the adjudication of the complaint is made by a panel of educators, and appeal rights are limited to five day reconsideration by a panel of educators. Augustana's adjudicatory process, particularly for serious allegations of rape, is a poor substitute for the due process rights afforded an accused in criminal proceedings.

6. Augustana intends to complete the adjudication within 60 days of the complaint-filing, the outcome of which undermines the province of a criminal jury, and otherwise will interfere with Plaintiff's due process rights arising under the Fifth Amendment of the United States Constitution.

7. Pursuant to its investigation and the written summary of evidence presented at the adjudication, Augustana has requested Plaintiff provide a statement and has further concluded that Plaintiff's failure to do so is evidence of his guilt. Here are the investigator's own inaccurate words which Augustana intends to read to the panel of educator's deciding Plaintiff's fate:

> **Against the strong evidence supporting [redacted] allegations, we have no denial from Koh, nor do we have an explanation from him as to how he obtained consent. The only conclusion this investigation can draw is that if he had obtained consent, he would have shared how he done so. Absent that explanation, and in the face of the credible and corroborated allegations by [redacted] the preponderance of evidence supports a finding that Koh violated all policies in issue by failing to obtain consent and using force.**

8. Augustana has suspended the Plaintiff from school pending the completion of the complaint adjudication. With the suspension, the fact that Plaintiff is now living three hours away and has a "no-contact" bond condition on the criminal charges, counsel for Plaintiff has

asked Augustana to stay the Title IX adjudication pending resolution of the criminal charges. Augustana refuses.

9. Augustana's Handbook permits modifications to the adjudication procedure provided it does not jeopardize fairness to either party. Under the circumstances, no party will be prejudiced if the Title IX adjudication is temporarily stayed.

10. By contrast, absent a stay, the Title IX adjudication will interfere with the Plaintiff's ongoing criminal proceedings in violation of his Fifth Amendment rights. An adverse outcome will also result in public findings by an academic institution which may jeopardize Plaintiff's ability to obtain professional licensure, his ability to successfully apply and be admitted to study at other schools, and his ability to obtain future employment. These adverse consequences are in violation of the Plaintiff's due process rights arising under the Fifth and Fourteenth Amendments.

11. The University has no legal obligation to provide for and require an adjudication of the complaint when parallel criminal proceedings exist. *See e.g. Department of Education Office for Civil Rights, Letter of Resolution and Buffalo State College*, OCR Complaint No. 02-05-2008 (August 30, 2005).

12. The guidance offered by the Department of Education sets no time frame by which an adjudication must be complete, rather acknowledges that a timely adjudication depends on the complexity of the case and the severity of the charges—thus implying that more serious cases should take longer to adjudicate.

13. Neither Augustana nor the party who initiated the complaint are at greater risk if Title IX proceedings are stayed. The Plaintiff has been suspended from Augustana, is currently not enrolled in any classes, and is residing three hours away with his family in Iowa. The

criminal court has ordered "no-contact" as a condition of bond. As such, the goal of Title IX and Augustana's Equal Opportunity (Civil Rights) Policies and Procedures is being met and no adjudication of the Complaint is otherwise necessary or legally required to be completed in the near future.

14. Augustana should be restrained and otherwise enjoined under SDCL 15-6-65(a) from proceeding with the adjudication of the Complaint pending resolution of the criminal charges.

15. Based on the foregoing, Plaintiff faces an immediate and continuing risk of irreparable harm.

16. The accepted standard in deciding whether to grant or deny preliminary injunctive relief is as follows:

a. The threat of irreparable harm to the movant;

b. The state of the balance between this harm and the injury that granting the injunction will inflict on other party litigants;

c. The probability that the movement will succeed on the merits; and

d. The public interest.

Dacy v. Gors, 471 N.W.2d 576, 579 (S.D. 1991) (citing *Dataphase Systems, Inc. v. C.L. Systems, Inc.*, 640 F.2d 109, 111 (8th Cir. 1981)).

17. The Plaintiff submits that the consideration of the above factors support the issuance of a preliminary injunction under the circumstances at hand.

18. Plaintiffs requests the Court schedule an evidentiary hearing to determine whether it is entitled to a preliminary injunction as requested herein.

Dated this 22nd day of September, 2015

CADWELL SANFORD DEIBERT & GARRY, LLP

Shawn M. Nichols
200 East 10th Street, Suite 200
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605-336-0828
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Attorney for Plaintiff

STATE OF SOUTH DAKOTA	) :SS	IN CIRCUIT COURT
COUNTY OF MINNEHAHA	)	SECOND JUDICIAL CIRCUIT

KOH TSURUTA, Plaintiff, v. AUGUSTANA UNIVERSITY, Defendant.	Civ. 15 – BRIEF IN SUPPORT OF APPLICATION FOR PRELIMINARY INJUNCTION

INTRODUCTION

Before the Court is an urgent due process question: Should Augustana, in its role as an educator, be permitted to complete a Title IX adjudication labelling a young man as a rapist, in violation of his Fifth Amendment rights, while adequate criminal proceedings are simultaneously occurring? The facts and law suggest the answer is a resounding; "No". As such, Augustana should be temporarily enjoined from completing its Title IX adjudication in order to assure the accused Plaintiff's fundamental due process rights are protected.

FACTS

This case arises from sexual assault allegations between two Augustana students alleged to have occurred on July 3, 2015. The alleged victim reported the assault to law enforcement on August 4th. A complaint was filed with Augustana University on August 5th.

Augustana intends to proceed with an adjudication of the complaint pursuant to its Title IX policies and procedures handbook. The process outlined by this document provides no right of compulsory process, no right to examine witnesses, no right to present any meaningful evidence, no right to counsel, no right against self-incrimination, no right to trial by jury, and no right to present testimony. *See* Affidavit of Nichols at ¶ 2 (Handbook). Indeed, at the sole election of the educators presiding over the adjudication, the University can simply read a summary of the interviews arbitrarily conducted by its hired investigator. *Id.* On this limited basis the University can conclude that the Plaintiff committed forcible rape (an act which is criminally punishable by up to 50 years in prison). More to the point, Augustana indicates that its policy requires the complaint to be adjudicated within 60 days.

The adjudication of a rape allegation by a group of educators, without adequate process substantially interferes with Koh's rights under the Fifth Amendment which guarantee specific due process rights in criminal proceedings. Absent a decision to engage in what little process is offered (which would require a waiver of Fifth Amendment rights) Augustana is going to find adversely against Koh Tsuruta, an outcome that will separately carry substantial long-term consequences in future employment, professional licensure and academic pursuits. As explained below, there is no factual justification nor legal need for Augustana to complete an adjudication of the complaint within 60 days. As such, the Court can and should enter an order preliminarily enjoining and otherwise staying the Title IX adjudication. This will ensure the role of the jury and the criminal process is not undermined and the gathering of evidence is left to those professionally trained and equipped to handle matters of this nature.

ARGUMENT AND AUTHORITY

A. Legal Standards

The issuance of an injunction requires a consideration of four factors: (1) the threat of irreparable harm to the movant; (2) the balance between the potential harm and any harm that granting the injunction will cause to the other parties to the litigation; (3) the probability that the movant will succeed on the merits; and (4) the public interest. *Dacy v. Gors*, 471 N.W.2d 576, 579 (S.D. 1991) (*Dataphase Sys. Inc. v. C.L. Sys., Inc.*, 640 F. 2d 109, 111 (8th Cir. 1981)). No single factor is determinative. Rather, the likelihood that the movant will prevail on the merits must be examined in the context of the relative injuries to the parties and the public. *Dataphase*, 640 F.2d at 113. If the chance of irreparable injury to the movant should relief be denied is outweighed by the likely injury to the other parties should the motion be granted, the moving party faces a heavy burden to establish a likelihood of success on the merits. *Id.* In contrast, where the moving party raises a substantial question and the equities are otherwise strongly in its favor, the showing of success on the merits can be less. *Id.* Here, as the following analysis demonstrates, a balancing of these factors weighs in favor of the issuance of an injunction in favor of the Plaintiffs.

B. Title IX History

Before discussing the law applicable to injunctive relief, some background information is appropriate. Nearly 50 years ago, Congress created Title IX to assure gender fairness and equality in an academic setting and to otherwise discourage and prevent discrimination. *See* 20 USC § 1681. Through judicial and regulatory accretion, Title IX has expanded in scope to embrace the notion that institutions receiving federal funding must have policies and procedures in place to assure a safe academic environment, free from sexual discrimination, including sexual harassment as a form of discrimination. *See e.g. Rowinski v. Bryan Ind. School Dist.*, 80 F2d 1006, 1015 (5th Cir. 1981). While far from the initial 1972 legislation establishing Title IX, a safe and non-discriminatory school, free from harassment, remains the goalposts. A deeper dive into Title IX guidance does not foist a rigid system on universities that require rape complaints to be adjudicated to a decision within a 60 day time frame.

Indeed, Title IX does not require that all complaints be adjudicated. *See e.g. Department of Education Office for Civil Rights, Letter of Resolution and Buffalo State College*, OCR

Complaint No. 02-05-2008 (August 30, 2005). According to this document, a university that reports a criminal matter to the authorities and cooperates in the investigation has met its Title IX obligations. *Id.* When a university decides to adjudicate a complaint, the DOE Office of Civil Rights guidance materials do not impose timelines for doing so. *See Department of Education Office for Civil Rights "Dear Colleague Letter" from Russlynn Ali,* April 4, 2011. Indeed, the OCR has indicated that a timeline for adjudicating complaints depends on a number of factors including the size of the institution, the nature of the allegations and the scope of the investigation. *Id.* While the OCR has suggested that 60 days may be a reasonable time frame for some cases, it is hardly a rule particularly in complex cases like this one. As this case involves allegations of forcible rape, rushing to judgment in 60 days is simply unnecessary and contrary to the law.

C. Legal Analysis

Based on the policy consideration set forth above and the facts applicable to the *Dataphase* factors, a preliminary injunction is appropriate in this case

1. Koh will be Irreparable Harmed Absent a Preliminary Injunction.

The first *Dataphase* factor weighs strongly in favor of injunctive relief. It bears repeating that the purpose of a Title IX proceeding is to is prevent discrimination through harassment. That goal has been achieved and so there is no exigent need to proceed with a hearing. Indeed, in this particular case Augustana immediately suspended Koh from school. *See* Affidavit of Tsuruta. He likewise is under a no-contact order as part of the criminal charges against him. *Id.* Koh has moved back to Iowa with his family pending the criminal case, and has no contact with Augustana, or the victim. *Id.* Thus, the core requirements under Title IX have already been met and there is no need to inflexibly plow ahead with an academic adjudication that will forever impact Koh Tsuruta future.

By contrast, Augustana's investigator has already concluded that Koh's decision to refrain from providing a statement in the Title IX investigation, means he is guilty. Thus Koh is faced with an untenable election—either waive his rights arising under the Fifth Amendment to clear his name, or assert his Constitutional rights and suffer the outcome advocated by Augustana's investigator. Of course a finding by Augustana that Koh committed forcible rape means a certain professional, vocational and educational black-ball. More importantly, the outcome of the academic adjudication directly interferes with the mission of the criminal jury, and otherwise interferes with the Fifth Amendment rights that Koh is entitled to as a matter of law. While authority addressing the conflict between parallel Title IX and criminal proceedings is thin, scholars are already commenting on the fundamental unfairness associated with simultaneously adjudicating a criminal and institutional proceeding. *See* A HOSTILE ENVIRONMENT FOR STUDENT DEFENDANTS: TITLE IX AND SEXUAL ASSAULT ON COLLEGE CAMPUSES, Henrick, Northern Kentucky Law Review Volume 40:1 (2013).

Although Koh, through counsel, has denied the allegations against him and indicated that he will not cooperate in providing a statement to Augustana while criminal charges are pending, Augustana is holding it against him. The violation of Koh's due process rights are obvious. The harm is obvious. Absent a preliminary injunction this bell can never be un-rung.

2. Koh is likely to prevail on the merits.

The second factor for the Court to consider is the likelihood of success on the merits. This is largely a legal question, however, the Court need not conclude what the law is, rather, whether the applicant has demonstrated a likelihood of succeeding. While no case directly discusses the exact issue before the Court, there is legal authority for enjoining parallel administrative proceedings that jeopardize criminal rights. *See U.S. v. Henry,* 591 F2d 702 (Sixth Cir. 1974); *Texaco, Inc., v. Borda,* 838 F2d 607, 608-609 (3D Cir. 1967); *Silver v. McCaimey,* 221 F2d 873, 874-875 (D. C. Cir. 1955); *United States v. O'Connor*, 118 FSupp. 248 (D. Mass. 1953). These cases generally have held that a court has discretion to stay civil—particularly in situations with the potential to violate rights against self-incrimination, expose strategic defenses to the prosecution in advance of a criminal trial, or which otherwise prejudice the defense—if a delay of a non-criminal proceeding would not seriously injure the public interest. *Id*

The *Younger* doctrine, while academically distinct from the issue before the Court, similarly speaks to the relief requested here. *See Younger v. Harris*, 401 US 496 (1941). The *Younger* doctrine involves circumstances in which federal courts will enjoin state court proceedings. While these are not our facts, a key basis for the *Younger* doctrine is to prevent the erosion of the jury's role in deciding criminal cases, and to avoid duplicate proceedings. *See id.* That is precisely the aim of the present motion seeking to stay Title IX proceedings. Absent a stay, Koh's criminal defense is seriously undermined in violation of the Fifth Amendment. Under the applicable *Dataphase* factors, the Plaintiff has established a likelihood of success on the merits.

Even without legal authority, Augustana's own policy and federal guidance confirms that no adjudication need be completed in 60 days. As explained above, Augustana has no federal mandate requiring it to complete and adjudicate this case within 60 days. *See Department of Education Office for Civil Rights "Dear Colleague Letter" from Russlynn Ali,* April 4, 2011. To the contrary, federal guidance suggests that the adjudication time frames depend on a variety of factors, including the nature of the allegations, the size of the institution, and the institution's ability to adjudicate the charges fairly. *Id.* Because we have a criminal case subject to punishment of up to 50 years in jail, it would logically follow that a small University with limited experience in criminal matters should not be adjudicating a case of this magnitude within 60 days. Furthermore, even Augustana's own policy allows it to deviate from the standard operating procedure provided doing so would not be unfair to either party. *See* Nichols Affidavit at Exhibit 1. Therefore, this Court need not consider the constitutionality of a parallel prosecution. There is simply no basis by which Augustana is compelled to complete an adjudication within 60 days. Further, the facts of this case do not create an emergency by which Augustana might otherwise feel compelled to rush to judgment and forever label a young man as a rapist. A preliminary injunction is appropriate for this additional reason.

3. Balancing the potential harm favors a preliminary injunction.

The third factor also weighs strongly in Koh's favor. Augustana has already suspended Koh from school and a no-contact bond condition exists in the criminal case. Augustana nor the party who initiated the complaint will be any more safe if their academic adjudication proceeds. Koh is not even living in the state at the moment. On the other hand, if Augustana advances its administrative proceeding and labels Koh a rapist because he invokes his fundamental rights under the Fifth Amendment, the harm is catastrophic and irreparable. It bears repeating that an academic adjudication labelling Koh as a rapist will impact job applications, professional licensures, and admission to further academic study. Accordingly, the third *Dataphase* factor weighs heavily in Koh's favor.

4. Public interest has been satisfied

The public's interests are protected by the criminal proceeding currently pending in Minnehaha County. A "no-contact" bond condition exists. Furthermore, Augustana has exercised its right to suspend Koh pursuant to its handbook. Koh lives three hours away from Sioux Falls. The status quo more than adequately addresses any concerns to the public at large.

On the other hand, in South Dakota an accused is entitled to an expectation of due process in criminal matters. Augustana also likely has an interest in accurately determining whether there are incidents of forcible rape between its students. Under the circumstance the public has no pressing need for Augustana to complete a hasty adjudication and label one of its students as a rapist when adequate criminal proceedings are already underway. The fourth *Dataphase* factor, therefore, also weighs heavily in favor of injunctive relief.

CONCLUSION

For all the reasons set forth herein, the Plaintiff should be granted a preliminary injunction staying judicatory proceedings until a permanent injunction hearing can be had, or a permanent injunction hearing, or resolution of the criminal case.

Dated this 22nd day of September, 2015

CADWELL SANFORD DEIBERT & GARRY, LLP

Shawn M. Nichols
200 East 10th Street, Suite 200
PO Box 2498
Sioux Falls, SD 57101-2498
605-336-0828
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Attorney for Plaintiff

STATE OF SOUTH DAKOTA) :SS COUNTY OF MINNEHAHA)	IN CIRCUIT COURT SECOND JUDICIAL CIRCUIT
KOH TSURUTA, Plaintiff, v. UNIVERSITY OF AUGUSTANA, Defendant.	CIV. 15 – AFFIDAVIT OF KOH TSURUTA

Koh Tsuruta, being first duly sworn on oath, deposes and states as follows:

1. I have personal knowledge of all matters contained herein unless otherwise qualified.

2. This affidavit is submitted in support of my application for a preliminary injunction in this matter.

3. As demonstrated by the attached Exhibit 1, Augustana has suspended me from school pending the completion of a Title IX complaint filed against me.

4. I am currently living in Lake Mills, Iowa with my parents which is approximately three hours from Sioux Falls by car. I intend to continue living in Lake Mills for the foreseeable future.

5. I currently have criminal charges pending in Minnehaha County arising from the same facts which are part of the Title IX proceedings being handled by Augustana. As part of my bond conditions, the Court has ordered that I have no contact with the individual who filed the Title IX complaint against me.

Dated this 21st day of September, 2015.

Koh Tsuruta

Subscribed and sworn before
me this 21st day of September, 2015

Shawn Nichols

Notary Public - South Dakota
My commission expires: 9/15/21

SHAWN M. NICHOLS
SEAL NOTARY PUBLIC SOUTH DAKOTA SEAL

Subject: Fwd: Notice of Investigation - Augustana College
Date: Monday, September 21, 2015 at 11:02 AM
From: Koh Tsuruta <ketsuruta08@ole.augie.edu>
To: Mike Butler <mike.butlerlaw@midconetwork.com>, Lana Sanner <lana.butlerlaw@midconetwork.com>

---------- Forwarded message ----------
From: **Beth Torkelson** <beth.torkelson@augie.edu>
Date: Monday, August 17, 2015
Subject: Notice of Investigation - Augustana College
To: Koh Tsuruta <ketsuruta08@ole.augie.edu>

Dear Koh,

This letter provides you with an official response to the sexual misconduct complaint filed which named you as the Respondent. The College has initiated its own investigation with the following alleged violation(s) under review:

Non-Consensual Sexual Intercourse is defined as any sexual penetration or intercourse (anal, oral or vaginal), however slight, with any object by a person upon another person that is without consent and/or by force. Sexual penetration includes vaginal or anal penetration by a penis, tongue, finger or object, or oral copulation by mouth to genital contact or genital to mouth contact.

Please refer to the Equal Opportunity (Civil Rights) Policies and Procedures for a complete description of the policy and procedures. A copy can be found at www.augie.edu/titleix <http://www.augie.edu/titleix>.

You may have the assistance of an advocate during this process. Corey Kopp, Director of Campus Life, will be available to help answer any questions. Please contact him at 605-274-5215.

EXHIBIT I

Due to the nature of the allegations and ongoing criminal process, you have been suspended on an interim basis. This includes attending classes, on-campus activities and events, and on-campus housing. You are not to be on campus or at any college-sponsored events unless written permission has been given by me. The College will review this suspension upon the completion of the investigation.

You are also not to have any contact with Emilia VanErt until further notice. This letter serves as your no contact order and will be reviewed upon the completion of the investigation.

Please contact me by email or at 605-274-4044 to confirm receipt of this letter.

Sincerely,
Beth

Beth Torkelson
Assistant Dean of Students/Title IX Coordinator
605.274.4124
beth.torkelson@augie.edu <javascript:_e(%7B
%7D,'cvml','beth.torkelson@augie.edu');>

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	:SS	
COUNTY OF MINNEHAHA	)	SECOND JUDICIAL CIRCUIT

KOH TSURUTA, Plaintiff, v. UNIVERSITY OF AUGUSTANA, Defendant.	CIV. 15 – AFFIDAVIT OF SHAWN NICHOLS

Shawn Nichols, being first duly sworn on oath, deposes and states as follows:

1. I have personal knowledge of all matters contained herein unless otherwise qualified.

2. Attached hereto as Exhibit 1 is a true and correct of Equal Opportunity (Civil Rights) Policies and Procedures handbook.

Dated this 22 day of September, 2015.

[signature]

Shawn Nichols.
Cadwell Sanford Deibert & Garry, LLP
PO Box 2498
Sioux Falls, SD 57101-2498
Attorney for Plaintiff

Subscribed and sworn before
me this 22nd day of September, 2015

Notary Public - South Dakota
My commission expires: 11-10-25

MARY E. DUNLAP
SEAL NOTARY PUBLIC SOUTH DAKOTA SEAL

AUGUSTANA COLLEGE

EQUAL OPPORTUNITY (CIVIL RIGHTS) POLICIES AND PROCEDURES

Title IX, Sexual Harassment, Discrimination and Other Bias Related Conduct

EXHIBIT

EQUAL OPPORTUNITY (CIVIL RIGHTS)

POLICIES AND PROCEDURES

Augustana College affirms its commitment to promote the goals of fairness and equity in all aspects of the educational enterprise. College policies and procedures related to discrimination (age, race, sex, gender identity, nationality, etc.) are designed to promote principles of global human dignity with an emphasis on meaningful remedies, social justice, victim empowerment and advocacy, comprehensive investigation and prompt, humane, non-adversarial resolution of everything from bias incidents to stalking, to rape and intimate partner violence.

The policies presented here are subject to resolution using the College's Equity Grievance Process. This process is based upon an Office for Civil Rights (OCR) compliant model called the "One Policy, One Process Model," hereafter referred to as 1P1P. Augustana resolves discrimination complaints involving, students, faculty and staff using a common policy and one centralized procedure.

The Equity Grievance Process is applicable regardless of the status of the parties involved, who may be members or non-members of the campus community, students, student organizations, faculty, administrators and/or staff.

Notes:

1. Augustana College continues a review of its policies and resolution procedures to ensure that processes, protocols and resources are in compliance with guidance issued by the U.S. Department's Office for Civil Rights. During this process, content appearing on the College's website supersedes all print documents and will serve as the essential resource for current practice.

2. Recent guidance from the U.S. Department of Education's Office for Civil Rights clarifies that sexual harassment includes all forms of sexual violence including sexual misconduct, exploitation, stalking and other related policies as defined in this publication.

3. Augustana's use of the 1P1P model is permitted through a license granted by The National Center for Higher Education Risk Management and the Association for Title IX Administrators. All other rights reserved by The NCHRM Group, LLC/ATIXA ©2013

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OVERVIEW

Reports of discrimination, harassment and/or retaliation should be made promptly. There is no time limitation on the filing of grievances as long as the accused individual remains subject to the College's jurisdiction. All reports are acted upon promptly while every effort is made by the College to preserve the privacy of reports.

These policies apply to behaviors that take place on the campus, at college-sponsored events and may also apply off-campus and to actions online when it is determined that the off-campus conduct affects a substantial College interest. A substantial College interest is defined to include:

a. Any action that constitutes a criminal offense as defined by federal or state law. This includes, but is not limited to, single or repeat violations of any local, state or federal law committed in the municipality of Sioux Falls where Augustana College is located;

b. Any situation where it appears that the accused individual may present a danger or threat to the health or safety of self or others;

c. Any situation that significantly impinges upon the rights, property or achievements of self or others or significantly breaches the peace and/or causes social disorder; and/or

d. Any situation that is detrimental to the educational interests of Augustana College.

Off-campus discriminatory or harassing speech by employees may be regulated by Augustana College only when such speech is made in an employee's official or work-related capacity.

The Assistant Dean of Students serves as the College's Title IX/Equity/Affirmative Action Coordinator (hereafter referred to as Title IX Coordinator) and oversees implementation of the College's policy on equal opportunity, harassment and nondiscrimination.

Inquiries about this policy and procedure may be made internally to:

Beth Torkelson
Assistant Dean of Students (Title IX Coordinator)
Dean of Students Office
Edith Mortenson Center #116
(605) 274-4124
beth.torkelson@augie.edu

Inquiries may be made externally to:

Office for Civil Rights (OCR)
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-1100
Customer Service Hotline #: (800) 421-3481
Facsimile: (202) 453-6012
TDD#: (877) 521-2172
Email: OCR@ed.gov
Web: http://www.ed.gov/ocr
Web: https://www.notalone.gov/

POLICY STATEMENTS

1. Policy on Nondiscrimination
Augustana College adheres to all federal and state civil rights laws banning discrimination in institutions of higher education.

Augustana College is committed to providing equal access to and participation in employment opportunities and in programs and services, without regard to race, color, religion, creed, sex, sexual orientation, national origin, ancestry, age or disability. The College complies with Title IX of the Education Amendments of 1972, the Americans with Disabilities Act, the Rehabilitation Act, and other applicable laws providing for nondiscrimination against all individuals. The College will provide reasonable accommodations for known disabilities to the extent required by law.

This policy covers nondiscrimination in employment and in access to educational opportunities. Therefore, any member of the campus community, guest or visitor who acts to deny, deprive or limit the educational, employment, residential and/or social access, benefits and/or opportunities of any member of the campus community on the basis of their actual or perceived membership in the protected classes listed above is in violation of the College policy on nondiscrimination. When brought to the attention of the College, any such discrimination will be appropriately remedied by the College according to the procedures below.

2. Policy on Accommodation of Disabilities
Augustana College is committed to full compliance with the Americans With Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws pertaining to individuals with disabilities. Under the ADA and its amendments, a person has a disability if he or she has a physical or mental impairment that substantially limits a major life activity. The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by the institution whether qualified or not. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking or caring for oneself.

The Director of Student Academic Support Services has been designated as the ADA/504 Coordinator responsible for coordinating efforts to comply with these disability laws, including investigation of any grievance alleging noncompliance.

a. Students with Disabilities – Augustana College is committed to providing qualified students with disabilities with reasonable accommodations and support needed to ensure equal access to the academic programs and activities of the College.

   All accommodations are made on a case-by-case basis. A student requesting any accommodation should first contact the Director of Student Academic Support Services who coordinates services for students with disabilities. The director reviews documentation provided by the student and, in consultation with the student, determines which accommodations are appropriate to the student's particular needs and academic programs.

b. Employees with Disabilities – Pursuant to the ADA, Augustana College will provide reasonable accommodation(s) to all qualified employees with known disabilities, where their disability affects the performance of their essential job functions, except where doing so would be unduly disruptive or would result in undue hardship.

   An employee with a disability is responsible for requesting an accommodation in writing to the Human Resources Office and provide appropriate documentation. The Human Resources Office will work with the employee's supervisor to identify which essential functions of the position are affected by the employee's disability and what reasonable accommodations could enable the employee to perform those duties.

3. Policy on Discriminatory Harassment

Students, faculty and staff are entitled to a working environment and educational environment free of discriminatory harassment. Augustana College's harassment policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial or sensitive subject matters protected by academic freedom. The sections below describe the specific forms of legally prohibited harassment that are also prohibited under this policy.

a. Discriminatory and Bias-Related Harassment – Harassment constitutes a form of discrimination. The College will remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a hostile environment. When harassment rises to the level of creating a hostile environment, the College may also impose sanctions on the harasser. This harassment policy explicitly prohibits any form of harassment, defined as unwelcome conduct on the basis of actual or perceived membership in a protected class, by any member or group of the community.

A hostile environment may be created by oral, written, graphic, or physical conduct that is sufficiently severe, persistent/pervasive and objectively offensive that it interferes with, limits or denies the ability of an individual to participate in or benefit from educational programs or activities or employment access, benefits or opportunities.[1]

Offensive conduct and/or harassment that does not rise to the level of discrimination or that is of a generic nature not on the basis of a protected status may not result in the imposition of discipline under this policy, but will be addressed through civil confrontation, remedial actions, education and/or effective conflict resolution mechanisms. For assistance with conflict resolution techniques, faculty and staff personnel should contact the Title IX Coordinator or a confidential resource (refer to Section 8a. Policy on Confidentiality – Confidential Reporting, page 8).

Augustana condemns and will not tolerate discriminatory harassment against any student, employee, visitor or guest on the basis of any status protected by college policy or law.

[1] This definition of hostile environment is based on Federal Register / Vol. 59, No. 47 / Thursday, March 10, 1994: Department Of Education Office For Civil Rights, Racial Incidents and Harassment Against Students at Educational Institutions Investigative Guidance. The document is available at http://www.ed.gov/about/offices/list/ocr/docs/race394.html.

4. Policy on Sexual Misconduct

State law defines various violent and/or non-consensual sexual acts as crimes. Additionally, Augustana College has defined categories of sexual misconduct, as stated below, for which action under this policy may be imposed. Generally speaking, Augustana considers non-consensual sexual intercourse violations to be the most serious, and therefore typically imposes the most severe sanctions, including suspension or expulsion for students and termination for faculty and staff. However, the College reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any act of sexual misconduct or other gender-based offenses, including intimate partner or relationship (dating and/or domestic) violence, non-consensual sexual contact and stalking based on the facts and circumstances of the particular grievance. Acts of sexual misconduct may be committed by any person upon any other person, regardless of the sex, gender, sexual orientation and/or gender identity of those involved. Violations include:

a. Sexual Harassment – Both the Equal Employment Opportunity Commission and the State of South Dakota regard sexual harassment as a form of sex/gender discrimination and, therefore, as an unlawful discriminatory practice. Augustana College has adopted the following definition of sexual harassment, in order to address the special environment of an academic community, which consists not only of employer and employees, but of students as well.[2]

Sexual harassment is unwelcome, sexual or gender-based verbal, written, online and/or physical conduct.[3]

Consensual relationships of a romantic or sexual nature between an Augustana College employee and a current student, or between supervisors and those they supervise, may be construed as, or may in fact be, sexual harassment, and are prohibited. Because a unique position of power or control exists in such relationships, then term "consent" is made ambiguous. Consequently, to claim a consensual relationship is not an acceptable defense against charges of sexual harassment.

Anyone experiencing sexual harassment in any college program is encouraged to report it immediately to the College's Title IX Coordinator. Sexual harassment creates a hostile environment, and may be disciplined when it is sufficiently severe, persistent/pervasive and objectively offensive that it;

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[2] Also of relevance is the Office of Civil Rights 2001 statement on sexual harassment, "Revised Sexual Harassment Guidance: Harassment Of Students By School Employees, Other Students, Or Third Parties, Title IX," which can be found at http://www2.ed.gov/legislation/FedRegister/other/2001-1/011901b.html, as well as the April, 2011 Dear Colleague Letter on Campus Sexual Violence, which can be found at: http://www.whitehouse.gov/sites/default/files/dear_colleague_sexual_violence.pdf

[3] Some examples of possible Sexual Harassment include:

- A professor insists that a student have sex with him/her in exchange for a good grade. This is harassment regardless of whether the student accedes to the request.
- A student repeatedly sends sexually oriented jokes around on an email list s/he created, even when asked to stop, causing one recipient to avoid the sender on campus and in the residence hall in which they both live.
- Explicit sexual pictures are displayed in a professor's office or on the exterior of a residence hall door
- Two supervisors frequently 'rate' several employees' bodies and sex appeal, commenting suggestively about their clothing and appearance.
- A professor engages students in her class in discussions about their past sexual experiences, yet the conversation is not in any way germane to the subject matter of the class. She probes for explicit details, and demands that students answer her, though they are clearly uncomfortable and hesitant.
- An ex-girlfriend widely spreads false stories about her sex life with her former boyfriend to the clear discomfort of the boyfriend, turning him into a social pariah on campus.

- has the effect of unreasonably interfering with, denying or limiting employment opportunities or the ability to participate in or benefit from the College's educational, social and/or residential program, and is

- based on power differentials (*quid pro quo*), the creation of a hostile environment or retaliation.

b. Non-Consensual Sexual Intercourse is defined as any sexual penetration or intercourse (anal, oral or vaginal), however slight, with any object by a person upon another person that is without consent and/or by force. Sexual penetration includes vaginal or anal penetration by a penis, tongue, finger or object, or oral copulation by mouth to genital contact or genital to mouth contact.

c. Non-Consensual Sexual Contact[4] is any intentional sexual touching, however slight, with any object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, genitals, mouth or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

d. Sexual Exploitation refers to a situation in which a person takes non-consensual or abusive sexual advantage of another, and situations in which the conduct does not fall within the definitions of Sexual Harassment, Non-Consensual Sexual Intercourse or Non-Consensual Sexual Contact. Examples of sexual exploitation include, but are not limited to:

- Sexual voyeurism (such as watching a person undressing, using the bathroom or engaged in sexual acts without the consent of the person observed).

- Taking pictures or video or audio recording another in a sexual act, or in any other private activity without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent).

- Prostitution.

- Sexual exploitation also includes engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or other sexually transmitted disease (STD) and without informing the other person of the infection, and further includes administering alcohol or drugs (such as "date rape" drugs) to another person without his or her knowledge or consent.

[4] The State of South Dakota definition for non-consensual sexual contact, is any touching, not amounting to rape, whether or not through clothing or other covering, of the breasts of a female or the genitalia or anus of any person with the intent to arouse or gratify the sexual desire of either party (SD Code §22-22-7.1). Such action is subject to criminal prosecutions for sexual assault, but may differ from the definition used on campus to address policy violations.

e. Consent[5] is knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct.

A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has violated this policy.

It is not an excuse that the individual responding party of sexual misconduct was intoxicated and, therefore, did not realize the incapacity of the other.
Incapacitation is defined as a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the "who, what, when, where, why or how" of their sexual interaction). This policy also covers a person whose incapacity results from mental disability, involuntary physical restraint and/or from the taking of incapacitating drugs.
Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous dating relationship is not sufficient to constitute consent. The existence of consent is based on the totality of the circumstances, including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced. Silence or the absence of resistance alone is not consent. A person can withdraw consent at any time during sexual activity by expressing in words or

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[5] Some examples of Consent include:

1) Amanda and Bill meet at a party. They spend the evening dancing and getting to know each other. Bill convinces Amanda to come up to his room. From 11:00pm until 3:00am, Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. He keeps at her, and begins to question her religious convictions, and accuses her of being "a prude." Finally, it seems to Bill that her resolve is weakening, and he convinces her to give him an "hand job" (hand to genital contact). Amanda would never had done it but for Bill's incessant advances. He feels that he successfully seduced her, and that she wanted to do it all along, but was playing shy and hard to get. Why else would she have come up to his room alone after the party? If she really didn't want it, she could have left. **Bill is responsible for violating the College Non-Consensual Sexual Contact policy. Bill coerced Amanda into performing unwanted sexual touching upon him. Where sexual activity is coerced, it is forced. Consent is not effective when forced. Sex without effective consent is sexual misconduct.**

2) Kevin and Amy are at a party. Kevin is not sure how much Amy has been drinking, but he is pretty sure it's a lot. After the party, he walks Amy to her room, and Amy comes on to Kevin, initiating sexual activity. Kevin asks her if she is really up to this, and Amy says yes. Clothes go flying, and they end up in Amy's bed. Suddenly, Amy runs for the bathroom. When she returns, her face is pale, and Kevin thinks she may have thrown up. Amy gets back into bed, and they begin to have sexual intercourse. Kevin is having a good time, though he can't help but notice that Amy seems pretty groggy and passive, and he thinks Amy may have even passed out briefly during the sex, but he does not let that stop him. When Kevin runs into Amy the next day, he thanks her for the wild night. Amy remembers nothing, and decides to make a complaint to the Dean. **This is a violation of the Non-Consensual Sexual Intercourse Policy. Kevin should have known that Amy was incapable of making a rational, reasonable decision about sex. Even if Amy seemed to consent, Kevin was well aware that Amy had consumed a large amount of alcohol, and Kevin thought Amy was physically ill, and that she passed out during sex. Kevin should be held accountable for taking advantage of Amy in her condition. This is not the level of respectful conduct expected of students.**

actions that he or she no longer wants the act to continue, and, if that happens, the other person must stop immediately.

In the State of South Dakota, a minor (meaning a person under the age of 16 years) cannot consent to sexual activity. This means that sexual contact by an adult with a person younger than 16 years old is a crime, as well as a violation of this policy, even if the minor wanted to engage in the act.

5. **Policy Statements on other Civil Rights Offenses (when the act is based upon the status of a protected class)**
   a. Threatening or causing physical harm, extreme verbal abuse or other conduct which threatens or endangers the health or safety of any person on the basis of their actual or perceived membership in a protected class
   b. Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of their actual or perceived membership in a protected class
   c. Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another on the basis of actual or perceived membership in a protected class
   d. Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the campus community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the hazing policy) on the basis of actual or perceived membership in a protected class; hazing is also illegal under South Dakota State law and prohibited by college policy
   e. Bullying, cyber-bullying, defined as repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally on the basis of actual or perceived membership in a protected class
   f. Violence between those in an intimate relationship to each other on the basis of actual or perceived membership in a protected class (this includes romantic relationships, dating, domestic[6] and/or relationship violence)[7]
   g. Stalking[8], defined as a course of conduct directed at a specific person that is unwelcome and would cause a reasonable person to feel fear[9]
   h. Any other rules, when a violation is motivated by the actual or perceived membership of the victim on the basis of sex or gender or in a protected class, may be pursued using this policy and process.

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[6] The State's definition of domestic violence is; physical harm, bodily injury, or attempts to cause physical harm or bodily injury, or the infliction of fear of imminent physical harm or bodily injury between family or household members (SD Code §25-10-1). Such action is subject to criminal prosecutions for domestic violence in South Dakota, but may differ from the definition used on campus to address policy violations.

[7] Examples of violence between those in an intimate relationship: Employee A has been in an intimate relationship with Employee B for over a year; Employee A punches Employee B in the face during an argument (Dating Violence).

[8] The state definition of stalking is; (1) Willfully, maliciously, and repeatedly following or harassing another person; (2) Making a credible threat to another person with the intent to place that person in reasonable fear of death or great bodily injury; or (3) Willfully, maliciously, and repeatedly harassing another person by means of any verbal, electronic, digital media, mechanical, telegraphic, or written communication (SD Codified Law 22-19A-1). Such action is subject to criminal prosecutions for stalking in South Dakota, but may differ from the definition used on campus to address policy violations.

[9] Examples of Stalking: Employee A recently ended an intimate relationship with Employee B. For the past three weeks, B has been sending A 100 text messages per day and waits by A's car at the end of each day to beg and plead with her to take him back. When she refuses, he loses control, makes threatening gestures, and tells her she will regret this. Employee A indicates she is fearful of what B might do to her (Stalking).

Sanctions for the above-listed "Other Civil Rights Behaviors" behaviors range from reprimand up through and including expulsion (students) or termination of employment.

6. Policy on Retaliation

Retaliation is defined as any adverse action taken against a person participating in a protected activity because of their participation in that protected activity. The College prohibits any retaliation against any person making a report or against any person cooperating in the investigation of an incident including witnesses. Retaliation includes intimidation, threats, or harassment. Acts of alleged retaliation should be reported immediately and will be promptly investigated. The College is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

7. Remedial Action

Augustana College will implement initial remedial and responsive and/or protective actions upon notice of alleged harassment, retaliation and/or discrimination. Such actions could include but are not limited to: no contact orders, providing counseling and/or medical services, academic support, living arrangement adjustments, providing a campus escort, academic or work schedule and assignment accommodations, safety planning, referral to campus and community support resources.

The College will also take additional prompt remedial and/or disciplinary action with respect to any member of the community, guest or visitor who has been found to engage in harassing or discriminatory behavior or retaliation. Procedures for handling reported incidents are fully described below.

Deliberately false and/or malicious accusations of harassment, as opposed to grievances which, even if erroneous, are made in good faith, are just as serious an offense as harassment and will be subject to appropriate disciplinary action.

8. Policy on Confidentiality (and reporting of offenses)

The College is committed to the highest ethical and professional standards of conduct and to the safety and well-being of all members of our community. To achieve this goal, the College expects and relies on each member of the community to report actual or suspected violations of federal or state laws, violations of College policy or procedures, or other suspected wrongdoings. This includes reports from students, third-parties, and/or anonymous sources. The following describes the reporting options at the College.

a. Confidential Reporting – If a reporting party would like the details of an incident to be kept confidential, the reporting party may speak with on-campus counselors, campus clinic providers, campus pastors, off-campus local rape crisis counselors, domestic violence resources and local or state assistance agencies, who will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor. Campus counselors are available for students and the Employee Assistance Program is available for employees free of charge and can be seen on an emergency basis twenty-four hours a day/seven days a week. These employees will submit anonymous statistical information for Title IX tracking and Clery Act purposes unless they believe it would be harmful to their client, patient or parishioner.

b. Formal Reporting Options – College employees have a Duty to Report, unless they fall under the section above. Parties making a report may want to consider carefully whether they share personally identifiable details with non-confidential employees, as those details must be shared by the employee with the Title IX Coordinator and/or Deputy Coordinators. Otherwise, employees must share all details of the reports they receive. If a reporting party does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the reporting party may make such a request to the Title IX Coordinator or Deputy Coordinators, who will evaluate that request in light of the duty to ensure the safety of the campus and comply with federal law.

In cases indicating pattern, predation, threat and/or violence, the College will be unable to honor a request for confidentiality. In cases where the victim requests confidentiality and the circumstances allow the College to honor that request, the College will offer interim supports and remedies to the victim and the community, but will not otherwise pursue formal action. A reporting party has the right, and can expect, to have reports taken seriously by the College when formally reported, and to have those incidents investigated and properly resolved through these procedures. Formal reporting still affords privacy to the reporter, and only a small group of officials who need to know will be told, including but not limited to: Title IX Coordinator, Deputy Coordinators, Hearing Panel members and Investigator. Information will be shared as necessary with investigators, witnesses and the responding party. The circle of people with this knowledge will be kept as tight as possible to preserve a reporting party's rights and privacy. Additionally, anonymous reports can be made by victims and/or third parties using the online reporting form posted at www.augie.edu/sexualmisconduct. Note that these anonymous reports may prompt a need for the College to investigate.

9. Policy on Federal Requirement for Timely Warnings

Victims of sexual misconduct should be aware that college administrators must issue timely warnings for incidents reported to them that pose a substantial threat of bodily harm or danger to members of the campus community. The College will make every effort to ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

RESOLUTION PROCEDURES & REMEDIES

Augustana College will act on any formal or informal grievance or notice of violation of the policy on Equal Opportunity, Harassment and Nondiscrimination, that is received by a Title IX Coordinator, deputy/deputies, a member of the Equity Grievance Panel or a member of the administration.

The procedures described below will apply to all grievances involving students, staff or faculty members. Redress and requests for responsive actions for grievances brought involving non-members of the community are also covered by these procedures.

1. Equity Grievance Panel (hereafter referred to as EGP)
Members of the EGP are announced in an annual distribution of this policy to campus, prospective students, their parents and prospective employees. The list of members and a description of the panel can be found at www.augie.edu/sexualmisconduct. Members of the EGP are trained in all aspects of the grievance process, and can serve in any of the following roles, at the direction of the Title IX Coordinators:

- To provide sensitive intake and initial counseling of grievances
- To serve in a mediation role [restorative justice] in conflict resolution
- To investigate grievances
- To act as advisors/advocates to those involved in grievances
- To serve on hearing panels for grievances
- To serve on appeal panels for grievances

EGP members also recommend proactive policies, and serve in an educative role for the community. The President, in consultation with the Title IX Coordinator, appoints the panel, which reports to the Title IX Coordinator. EGP members receive annual training organized by the Title IX Coordinator, including a review of college policies and procedures, so that they are able to provide accurate information to members of the community. All EGP members are required to attend an annual training.

Membership on the Equity Grievance Panel (EGP) will include:

- 4 Deputy Title IX Coordinators - one representative from each of the following divisions/units:
  - Student Affairs (*Assistant Dean of Students*)
  - Academic Affairs (*Faculty Member*)
  - Intercollegiate Athletics (*Assistant Athletic Director*)
  - Human Resources (*Employee Health Educator*).

Note: Deputy Coordinators serve as conveners for grievance panel hearings.

- A pool of at least 12 college personnel - representing the following divisions/units will serve on the EGP:
  - Student Affairs (*i.e., Center for Campus Life, Recreational Services, Campus Safety, Campus Learning Center*)
  - Academic Affairs (*i.e., Faculty, Library, IT Services, Center for Career and Academic Success, International Programs Office*)
  - Intercollegiate Athletics
  - Other (*Business Office, Advancement/Development, Admissions, Financial Aid, Facilities/Grounds/Central Services*)

- A pool of at least 6 other college personnel - in addition to those appointed as EGP members will serve as Advocates and will be assigned to parties involved in a grievance (complainant and respondent).

Appointments to serve on the EGP will be made with attention to representation of groups protected by the harassment and non-discrimination policy. Individuals who are interested in serving on the EGP are encouraged to contact the Title IX Coordinator.

2. Filing a grievance

Any member of the community, guest or visitor who believes that the policy on Equal Opportunity, Harassment and Nondiscrimination has been violated should contact a Title IX Coordinator or a member of the EGP. It is also possible for employees to notify a supervisor, or for students to notify an administrative advisor or faculty member with whom the complainant feels comfortable, or any member of the community may contact Campus Safety. These individuals will in turn notify the Title IX Coordinator. An online report form at www.augie.edu/sexualmisconduct is available to initiate a grievance.

All employees receiving reports of a potential violation of college policy are expected to promptly contact the Title IX Coordinator, within 24 hours of becoming aware of a report or incident. All initial contacts will be treated with the maximum possible privacy: specific information on any grievances received by any party will be reported to the Title IX Coordinator, but, subject to the College's obligation to redress violations, every effort will be made to maintain the privacy of those initiating a report of a grievance. In all cases, Augustana College will give consideration to the party bringing a grievance with respect to how the grievance is pursued, but reserves the right, when necessary to protect the community, to investigate and pursue a resolution when an alleged victim chooses not to initiate or participate in a formal grievance.

3. Grievance Intake

Following receipt of notice or a grievance, the Title IX Coordinator[10] will, promptly assign an EGP panel member to work as an advocate to the person who reported the grievance. Normally, within two business days, an initial determination by the appointed Investigator and Title IX Coordinator is made whether a Equal Opportunity policy violation may have occurred and/or whether conflict resolution might be appropriate. If the grievance does not appear to allege an Equal Opportunity policy violation then the grievance does not proceed to investigation but is forwarded to the appropriate office for further review.

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[10] If circumstances require, the President, Title IX Coordinator or a Deputy Coordinator shall designate another to oversee the resolution process, should a grievance be made against the Coordinator or if the Coordinator is otherwise unavailable or unable to fulfill their duties.

A full investigation will necessarily be pursued if there is evidence of a pattern of misconduct or a perceived threat of further harm to the community or any of its members. The College aims to complete all investigations within a 60 business day time period, which can be extended as necessary for appropriate cause by the Title IX Coordinator with notice to the parties.

4. Investigation

If a party bringing a grievance wishes to pursue a formal grievance or if the College, based on the alleged policy violation, wishes to pursue a formal grievance, then the appointed Investigator, normally the Director of Campus Safety who oversees the safety and security of the campus, will conduct the investigation, usually within two business days of determining that a grievance should proceed. Investigation of grievances brought directly by those alleging harm should be completed expeditiously, normally within 10 business days of notice to the Title IX Coordinator. Investigation may take longer when initial grievances fail to provide direct first-hand information. The College may undertake a short delay (several days to several weeks) when criminal charges on the basis of the same behaviors that invoke this process are being investigated. College action will not be altered or precluded on the grounds that civil or criminal charges involving the same incident have been filed or that charges have been dismissed or reduced. All investigations will be thorough, reliable and impartial, and will entail interviews with all relevant parties and witnesses, obtaining available evidence and identifying sources of expert information, if necessary.

5. Interim Remedies

If, in the judgment of the Title IX Coordinator, the safety or well-being of any member(s) of the campus community may be jeopardized by the presence on-campus of the accused individual or the ongoing activity of a student organization whose behavior is in question, the Title IX Coordinator (or designee) may provide interim remedies intended to address the short-term effects of harassment, discrimination and/or retaliation, i.e., to redress harm to the alleged victim and the community and to prevent further violations. These remedies may include referral to counseling, the Campus Clinic (on-campus health services) or to the Employee Assistance Program; education to the community; altering the housing situation of an accused student or resident employee (or the alleged victim, if desired); altering work arrangements for employees; providing campus escorts; implementing contact limitations between the parties; offering adjustments to academic deadlines, course schedules, etc.

The College may interim suspend a student, employee or organization pending the completion of investigation and EGP procedures. In all cases in which an interim suspension is imposed, the student, employee or student organization will be given the opportunity to meet with the Title IX Coordinator prior to such suspension being imposed, or as soon thereafter as reasonably possible, to show cause why the suspension should not be implemented. The Title IX Coordinator has sole discretion to implement or stay an interim suspension under the policy on Equal Opportunity, Harassment and Nondiscrimination, and to determine its conditions and duration. Violation of an interim suspension under this policy will be grounds for expulsion or termination.

During an interim suspension or administrative leave, a student or employee may be denied access to college housing and/or college facilities/events. As determined by the appropriate administrative officer, Title IX Coordinator or designee, this restriction includes classes and/or all other college activities or privileges for which the student might otherwise be eligible. At the discretion of the appropriate administrative officer, Title IX Coordinator or designee, alternative coursework options may be pursued to ensure as minimal an impact as possible on the accused student.

6. Grievance Resolution

During or upon the completion of investigation, the investigator will meet with the Title IX Coordinator. Based on that meeting, the Title IX Coordinator will make a decision on whether there is reasonable cause to proceed with the grievance. If the Title IX Coordinator decides that no policy violation has occurred or that the preponderance of evidence (i.e., whether it is more likely than not that the accused individual committed each alleged violation) does not support a finding of a policy violation, then the process will end unless the party bringing a grievance requests that the Title IX Coordinator makes an extraordinary determination to re-open the investigation or to forward the matter for a hearing. The Title IX Coordinator may refer the grievance to another office for review if other college policy violations are alleged. This decision lies in the sole discretion of the Title IX Coordinator. If there is reasonable cause, the Title IX Coordinator will direct the investigation to continue, or if there is a preponderance of evidence of a violation, then the Title IX Coordinator may recommend conflict resolution, a resolution without a hearing or a formal hearing, based on the below criteria.

a. Conflict Resolution – Conflict resolution is often used for less serious, yet inappropriate, behaviors and is encouraged as an alternative to the formal hearing process to resolve conflicts. The Title IX Coordinator will determine if conflict resolution is appropriate, based on the willingness of the parties, the nature of the conduct at issue and the susceptibility of the conduct to conflict resolution. In a conflict resolution meeting, a Title IX Coordinator or Deputy Coordinator will facilitate a dialogue with the parties to an effective resolution, if possible. Sanctions are not possible as the result of a conflict resolution process, though the parties may agree to appropriate remedies. The Title IX Coordinator will keep records of any resolution that is reached, and failure to abide by the accord can result in appropriate responsive actions.

   Conflict resolution will not be the primary resolution mechanism used to address grievances of sexual misconduct or violent behavior of any kind or in other cases of serious violations of policy, though it may be made available after the formal process is completed should the parties and the Title IX Coordinator believe that it could be beneficial. It is not necessary to pursue conflict resolution first in order to make a formal EGP grievance, and anyone participating in conflict resolution can stop that process at any time and request a formal hearing.

b. Resolution without a Hearing – Resolution without a hearing can be pursued for any behavior that falls within the policy on Equal Opportunity, Harassment and Nondiscrimination, at any time during the process. The Title IX Coordinator will provide written notification of a grievance to any member of the college community who is accused of an offense of harassment, discrimination, or retaliation. The Title IX Coordinator, together with the investigator, will meet with the responding individual to explain the finding(s) of the investigation. Once informed, the responding party may choose to admit responsibility for all or part of the alleged policy violations at any point in the process. If so, the Title IX Coordinator will render a finding that the individual is in violation of college policy for the admitted conduct, and will normally proceed to convene a formal hearing on any remaining disputed violations. For admitted violations, the appropriate Deputy Title IX Coordinator will recommend an appropriate sanction or responsive action. If the sanction/responsive action is accepted by both the party bringing a grievance and responding party, the Title IX Coordinator will implement it, and act promptly and effectively to remedy the effects of the admitted conduct upon the victim and the community. If either party rejects the sanction/responsive action, an EGP hearing will be held on the sanction/responsive action only, according to the EGP procedures below, except in the case of at-will employees for whom findings and responsive actions will be determined by the Title IX Coordinator in conjunction with the Director of Human Resources based on the results of the investigation.

c. Formal Hearing – For any grievances that are not appropriate for conflict resolution and which are not resolved without a hearing, the Title IX Coordinator will initiate a formal hearing or for employees for whom no hearing process is available, will refer his/her findings to the Human Resources Office for implementation.

7. Formal EGP Procedure

a. Hearing Panels – The Title IX Coordinator will appoint a non-voting panel Chair (Deputy Title IX Coordinator) depending on whether the responding party is a student, faculty or staff member and three members of the EGP to the hearing panel, none of whom have been previously involved with the grievance. Hearing panels may include both faculty and staff (with at least one faculty member selected in a grievance involving a faculty member). Any student members of the EGP do not serve on hearing panels. No member of the panel may be a practicing attorney. The panel will meet at times determined by the Deputy Title IX Coordinator.

b. Notification of Charges – At least one week prior to the hearing, or as far in advance as is reasonably possible if an accelerated hearing is scheduled with the consent of the parties, the Deputy Title IX Coordinator will send a letter to the parties with the following information. Once mailed, emailed and/or received in-person, notice will be presumptively delivered. The letter will contain:

- A description of the alleged violation(s), a description of the applicable procedures and a statement of the potential sanctions/responsive actions that could result.

- The time, date and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities. If any party does not appear at the scheduled hearing, the hearing will be held in their absence. For compelling reasons, the Deputy may reschedule the hearing.

- The parties may have the assistance of an EGP member, or other advocate, at the hearing. Typically, advocates are members of the campus community, but the parties may select whomever they wish to serve as their advisor, including attorneys. Note that the advisor may not make a presentation or represent the reporting party or responding party during the hearing. The parties to the hearing are expected to ask and respond to questions on their own behalf, without representation by their advisor. The advisor may consult with the advisee quietly or in writing, or outside the hearing during breaks, but may not speak on behalf of the advisee to the panel.

- Hearings for possible violations that occur near or after the end of an academic term will be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the College and remain within the 60-day goal for resolution.

c. Hearing Procedures – EGP Hearings will be convened, usually within one to two weeks of the completion of the investigation, and will be conducted in private. The EGP has the authority to hear all collateral misconduct, meaning that it hears all allegations of discrimination, harassment and retaliation, but also may hear any additional alleged policy violations that have occurred in concert with the discrimination, harassment or retaliation, even though those collateral allegations may not specifically fall within EGP jurisdiction. Accordingly, investigations should be conducted with as wide a scope as necessary.

Participants will include the non-voting Deputy Title IX Coordinator, the three members of the panel, the investigator who conducted the investigation on the grievance, the party bringing a grievance and responding party(ies) (or three organizational representatives in a case where an organization is charged), advocates to the parties and any called witnesses. The Deputy will exchange the names of witnesses the College intends to call, all pertinent documentary evidence and any written findings from the investigator between the parties at least two business days prior to the hearing. In addition, the parties will be given a list of the names of each of the EGP panel members at least two business days in advance of the hearing. Should either (any) party object to any panelist, he/she must raise all objections, in writing, to the Deputy immediately. Panel members will only be unseated if the Deputy concludes that their bias precludes an impartial hearing of the grievance. Additionally, any panelist or Deputy who feels he/she cannot make an objective determination must recuse himself or herself from the proceedings when notified of the identity of the parties and all witnesses in advance of the hearing.

The Deputy, in consultation with the parties and investigators, may decide in advance of the hearing that certain witnesses do not need to be physically present if their testimony can be adequately summarized by the investigator during the hearing. All parties will have ample opportunity to present facts and arguments in full and question all present witnesses during the hearing, though formal cross-examination is not used between the parties. If alternative questioning mechanisms are desired (screens, Skype, questions directed through the Chair, etc.), the parties should request them from the Deputy at least two business days prior to the hearing.

Once the procedures are explained and the participants are introduced, the investigator will present the report of the investigation first, and be subject to questioning by the parties and the EGP. The investigator will be present during the entire hearing process, but will only be present during deliberations at the request of the Deputy. The findings of the investigation are not binding on the panel, though any undisputed conclusions of the investigation report will not be revisited, except as necessary to determine sanctions/responsive actions. Once the investigator is questioned, the EGP will permit questioning of and by the parties, and of any present witness. Questions may be directed through the panel at the discretion of the Deputy.

Formal rules of evidence will not apply. Any evidence that the panel believes is relevant and credible may be considered, including history and pattern evidence. The Deputy will address any evidentiary concerns prior to and/or during the hearing, may exclude irrelevant or immaterial evidence and may ask the panel to disregard evidence lacking in credibility. The Deputy will determine all questions of procedure and evidence. Anyone appearing at the hearing to provide information will respond to questions on his/her own behalf.

Unless the Deputy determines it is appropriate, no one will present information or raise questions concerning: (1) incidents not directly related to the possible violation, unless they show a pattern, or (2) the sexual history of or the character of the victim/party bringing a grievance.

There will be no observers in the hearing. The Deputy may allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the panel or the parties involved. The panel does not hear from character witnesses, but will accept up to two letters supporting the character of the individuals involved.

In hearings involving more than one accused individual or in which two parties bringing grievances have accused the same individual of substantially similar conduct, the standard procedure will be to hear the grievances jointly; however, the Title IX Coordinator may permit the hearing pertinent to each responding party to be conducted separately. In joint hearings, separate determinations of responsibility will be made for each responding party.

Proceedings are private. All persons present at any time during the hearing are expected to maintain the privacy of the proceedings, subject to College consequences for failure to do so. While the contents of the hearing are private, the parties have discretion to share their own experiences if they so choose, and should discuss doing so with their advocates.

Hearings are recorded for purposes of review in the event of an appeal. EGP members, the parties and/or the persons who initiated the action, and appropriate administrative officers of the College will be allowed to listen to the recording in a location determined by the Title IX Coordinator or designee. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator. Persons given access to the recording will be required to sign an agreement confirming that they will protect the privacy of the information contained in the recording.

d. Decisions – The EGP will deliberate in closed session to determine whether the responding party is responsible or not responsible for the violation(s) in question. The panel will base its determination on a preponderance of the evidence (i.e., whether it is more likely than not that the accused individual committed each alleged violation). If an individual responding party or organization is found responsible by a majority of the panel, the panel will recommend appropriate sanctions to the Title IX Coordinator.

The Deputy will prepare a written deliberation report and deliver it to the Title IX Coordinator, detailing the finding, how each member voted, the information cited by the panel in support of its recommendation and any information the hearing panel excluded from its consideration and why. The report should conclude with any recommended sanctions. This report should not exceed two pages in length and must be submitted to the Title IX Coordinator within two (2) days of the end of deliberations. The Title IX Coordinator will review the deliberation report and will consult with the appropriate Vice President.

The Title IX Coordinator will inform the accused individual and the party bringing a grievance of the final determination within 2-3 business days of the hearing, without significant time delay between notifications. Notification will be made in writing and may be delivered by one or more of the following methods: in person; mailed to the local or permanent address of the parties as indicated in official college records; or emailed to the parties' college-issued email account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

e. Sanctions – Sanctions or responsive actions will be determined by the EGP. Factors considered when determining a sanction/responsive action may include:

- The nature, severity of, and circumstances surrounding the violation
- An individual's disciplinary history
- Previous grievances or allegations involving similar conduct
- Any other information deemed relevant by the EGP
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment and/or retaliation
- The need to remedy the effects of the discrimination, harassment and/or retaliation on the victim and the community

Student Sanctions – The following are the usual sanctions that may be imposed upon students or organizations singly or in combination:

- **Warning:** A formal statement that the behavior was unacceptable and a warning that further infractions of any college policy, procedure or directive will result in more severe sanctions/responsive actions.

- **Probation:** A written reprimand for violation of the Code of Student Conduct, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any college policy, procedure or directive within a specified period of time. Terms of the probation will be specified and may include denial of specified social privileges, exclusion from co-curricular activities, non-contact orders and/or other measures deemed appropriate.

- **Suspension:** Termination of student status for a definite period of time not to exceed two years, and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure at the College.

- **Expulsion:** Permanent termination of student status, revocation of rights to be on campus for any reason or attend college-sponsored events.

- **Withholding Diploma:** The College may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has a grievance pending, or as a sanction if the student is found responsible for an alleged violation.

- **Revocation of Degree:** The College reserves the right to revoke a degree awarded from the College for fraud, misrepresentation or other violation of college policies, procedures or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.

- **Organizational Sanctions:** Deactivation, de-recognition, loss of privileges for a specified period of time.

- **Other Actions:** In addition to or in place of the above sanctions, the college may assign any other sanctions as deemed appropriate.

Employee Sanctions – Responsive actions for an employee who has engaged in harassment, discrimination and/or retaliation include warning, required counseling, demotion, suspension with pay, suspension without pay and termination.

f. Enrollment Withdrawal or Employee Resignation While Charges Pending

Students: The College does not permit a student to withdraw if that student has a grievance pending for violation of the policy on Equal Opportunity, Harassment and Nondiscrimination, or for charges under the Code of Student Conduct. Should a student decide to leave and not participate in the investigation and/or hearing, the process will nonetheless proceed in the student's absence to a reasonable resolution and that student will not be permitted to return to the College unless all sanctions have been satisfied.

Employees: Should an employee resign while charges are pending, the records of the Title IX Coordinator will reflect that status, as will college responses to any future inquiries regarding employment references for that individual. The Title IX Coordinator will act to promptly and effectively remedy the effects of the conduct upon the victim and the community.

g. Appeals – All requests for appeal considerations must be submitted in writing to the Title IX Coordinator within five (5) business days of the delivery of the written finding of the EGP.

A three-member panel of the EGP designated by the Title IX Coordinator who was not involved in the grievance previously will consider all appeal requests. Any party may appeal, but appeals are limited to the following:

- A procedural error or omission occurred that significantly impacted the outcome of the hearing (e.g. substantiated bias, material deviation from established procedures, etc.).

- To consider new evidence, unknown or unavailable during the original hearing or investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included.

- The sanctions imposed are substantially disproportionate to the severity of the violation or better: The sanctions fall outside the range of sanctions the College has designated for this offense.

The appeals panel of the EGP will review the appeal request(s). The original finding and sanction/responsive actions will stand if the appeal is not timely or is not based on the grounds listed above, and such a decision is final. When any party requests an appeal, the other party (parties) will be notified and joined in the appeal. The party requesting appeal must show that the grounds for an appeal request have been met, and the other party or parties may show the grounds have not been met, or that additional grounds are met. The original finding and sanction are presumed to have been decided reasonably and appropriately.

Where the EGP appeals panel finds that at least one of the grounds is met, and proceeds, additional principles governing the hearing of appeals include the following:

- Appeals decisions by the EGP panel are to be deferential to the original decision, making changes to the finding only where there is clear error and to the sanction/responsive action only if there is a compelling justification to do so.
- Appeals are not intended to be full re-hearings of the grievance. In most cases, appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal. Appeals granted based on new evidence should normally be remanded to the original hearing panel for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or heard by a different three-member panel of the EGP.
- Sanctions imposed are implemented immediately unless the Title IX Coordinator or designee stays their implementation in extraordinary circumstances, pending the outcome of the appeal.
- The Title IX Coordinator will normally, after conferring with the EGP appeals panel, render a written decision on the appeal to all parties within 2-3 business days from hearing of the appeal.
- All parties should be informed of whether the grounds for an appeal are accepted and the results of the appeal decision.

- Once an appeal is decided, the outcome is final: further appeals are not permitted.

h. Failure to Complete Sanctions/Comply with Responsive Actions – All responding parties are expected to comply with conduct sanctions/responsive/corrective actions within the time frame specified by the Title IX Coordinator. Failure to follow through on conduct sanctions/responsive/corrective actions by the date specified, whether by refusal, neglect or any other reason, may result in additional sanctions/responsive/corrective actions and/or suspension, expulsion and/or termination from the College and may be noted on a student's official transcript. A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

i. Records – In implementing this policy, records of all grievances, resolutions, and hearings will be kept by the Title IX Coordinator indefinitely in a Title IX Coordinator database.

j. Statement of the Rights of a Party Bringing a Grievance

- To be treated with respect by college officials.
- To take advantage of campus support resources (such as counseling services, campus ministry, and the College's health service, or EAP services for employees).
- To experience a safe living, educational and work environment.
- To have an advocate during this process.
- To refuse to have an allegation resolved through conflict resolution procedures.
- To receive amnesty for minor student misconduct (such as alcohol or drug violations) that is ancillary to the incident.
- To be free from retaliation.
- To have grievances heard in substantial accordance with these procedures.
- To full participation of the injured party in any EGP process whether the injured party is serving as the party bringing a grievance or the college is serving as party bringing a grievance.
- To be informed in writing of the outcome/resolution of the grievance, sanctions where permissible and the rationale for the outcome where permissible.
- Refer to law enforcement and have assistance.
- Housing and living accommodations.
- No contacts.

k. Statement of the Rights of the Responding Party

- To be treated with respect by college officials.
- To take advantage of campus support resources (such as counseling services, campus ministry, and the College's health service, or EAP services for employees).
- To have an advocate during this process.
- To refuse to have an allegation resolved through conflict resolution procedures.
- To have grievances heard in substantial accordance with these procedures.

- To be informed of the outcome/resolution of the grievance and the rationale for the outcome, in writing.

Revisions

These policies and procedures will be reviewed and updated annually by the Title IX Coordinator and Deputy Coordinators. The Title IX Coordinator may make minor modifications to procedure that do not materially jeopardize the fairness owed to any party. However, the Title IX Coordinator may also vary procedures materially with notice (on the institutional web site, with appropriate date of effect identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this policy and procedure. Procedures in effect at the time of its implementation will apply. Policy in effect at the time of the offense will apply even if the policy is changed subsequently, unless the parties consent to be bound by the current policy.[11]

[11] Date of last review: November 5, 2014

Based upon the "One Policy, One Process Model," hereafter referred to as 1P1P, Augustana resolves discrimination complaints involving, students, faculty and staff using a common policy and one centralized procedure. Augustana's use of the 1P1P model is permitted through a license granted by The National Center for Higher Education Risk Management and the Association for Title IX Administrators. All other rights reserved by The NCHRM Group, LLC/ATIXA ©2013.